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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

ANTONIO CIPOLLONE, individually)
and as Executor of the Estate)
of ROSE D. CIPOLLONE,)

Plaintiffs,)

v.)

Docket
No. 83-2864 SA

LIGGETT GROUP, INC., a Delaware)
corporation; PHILIP MORRIS)
INCORPORATED, a Virginia)
Corporation; and LOEW'S)
THEATRES, INC., a New York)
Corporation;)

Before Honorable
H. Lee Sarokin

Defendants.)

The deposition of ERNEST B.

HOWARD, M.D., called by the plaintiffs, for
examination, taken pursuant to the Federal Rules
of Civil Procedure of the United States District
Court, pertaining to the taking of depositions,
taken before GLORIA M. SCHUELKE, C.S.R., R.P.R., a
Notary Public within and for the County of

Main Pl File Room

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1 Du Page, State of Illinois, and a Certified
2 Shorthand Reporter of said State, taken at 535
3 North Dearborn Street, Sixth Floor, Chicago,
4 Illinois 60610, on the 7th day of January, A. D.,
5 1986.

6
7 PRESENT

8
9 PORZIO, BROMBERG & NEWMAN,
10 163 Madison Avenue,
11 Morristown, New Jersey 07960
12 By: Mr. Marc Edell and
13 Ms. Jan I. Silverberg,
14 appeared on behalf of the
15 plaintiffs;

16
17 WEBSTER & SHEFFIELD,
18 One Rockefeller Plaza,
19 New York, New York 10020,
20 By: Mr. Francis X. Dehn,
21 appeared on behalf of the
22 defendant, Liggett Group, Inc.;

23
24 BROWN, CONNERY, KULP, WILLE,
PURNELL AND GREENE,
518 Market Street,
P. O. Box 1449,
Camden, New Jersey 08101,
By: Mr. Dennis P. Blake,
appeared on behalf of the
defendant, Philip Morris
Incorporated;

1 SHOOK, HARDY & BACON,
2 20th Floor Mercantile Bank Tower,
3 1101 Walnut,
4 Kansas City, Missouri 64106,
5 By: Mr. Steven C. Parrish,
6 appeared on behalf of the
7 defendant, Philip Morris
8 Incorporated;

9 SILLS, BECK, CUMMIS, ZUCKERMAN,
10 RADIN & TISCHMAN, P.A.,
11 33 Washington Street,
12 Newark, New Jersey 07102-3179,
13 By: Mr. Barry L. Shapiro,
14 appeared on behalf of the
15 defendant, Lorillard;

16 AMERICAN MEDICAL ASSOCIATION,
17 Associate General Counsel,
18 Health Law Division,
19 535 North Dearborn Street,
20 Sixth Floor,
21 Chicago, Illinois 60610,
22 By: Ms. Betty Jane Anderson,
23 appeared on behalf of the
24 deponent.

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2 1 ERNEST B. HOWARD, M.D.,
2 having been first duly sworn, depose, and saith
3 as follows:

4 DIRECT EXAMINATION

5 MR. EDELL: Doctor Howard, we
6 introduced ourselves before we started this
7 proceeding. Again, my name is Marc Edell. I
8 am an attorney. I represent the plaintiffs
9 in this action.

10 You are, here, pursuant to a
11 subpoena to testify concerning facts which we
12 believe to be relevant to this litigation;
13 or, alternatively, facts which might lead to
14 the discovery of relevant information.

15 All of the questions that I ask
16 you, here, today, will be taken down by this
17 lady to your right, who is a certified
18 shorthand reporter.

19 Your responses will be recorded;
20 and although we have somewhat of an informal
21 atmosphere in this conference room, as
22 opposed to a courtroom, you are under oath;
23 and you should treat it with the same
24 solemnity as if you were testifying in Court.

1 Do you understand, sir?

2 THE WITNESS: Yes, I understand.

3 MR. EDELL: You, also, understand all
4 of your responses must be audible, the court
5 reporter cannot take down a nod of the head.

6 If any of my questions, you are
7 unclear, they don't make any sense, please,
8 tell me; and I will try and rephrase them.

9 If you don't recall a particular
10 fact, or you don't know a particular fact,
11 please, tell us, because we are going to
12 presume that, one, you responded to a
13 question, you understood it, and you are,
14 accurately, responding to that question.

15 Do you understand, sir?

16 THE WITNESS: I understand.

17 MR. EDELL: If, at any time, for
18 whatever reason, you want to take a
19 break, please, tell me so. We will be happy
20 to accommodate you.

21 If you have a question of Miss
22 Anderson, please, feel free to consult with
23 her.

24 At any time, if you want to leave

1 the room, to speak with her, you are free to
2 do so, okay?

3 THE WITNESS: Yes.

4 MR. EDELL: Do you have any questions
5 with respect to the proceeding, so far?

6 THE WITNESS: No.

7 MR. EDELL: All right.

8 BY MR. EDELL:

9 Q How old are you, sir?

10 BY THE WITNESS:

11 A 75.

12 Q You were born February 5, 1910?

13 A That's correct.

14 Q And are you, presently, working?

15 A Yes, I am practicing medicine.

16 Q And where do you practice medicine?

17 A Arlington Heights, Illinois.

18 Q And do you restrict your practice to
19 any particular field?

20 A I restrict it to dermatology.

21 Q In preparation for this deposition, did
22 you meet with Miss Anderson?

23 A No, I did not.

24 Q Did you meet with any attorneys, in

1 preparation for this deposition?

2 A I met with no one in preparation for
3 the deposition.

4 Q Did you review any materials, any
5 documents --

6 A No, I reviewed nothing.

7 Q -- any notes?

8 Did you speak with anyone, any
9 attorney, over the phone?

10 A I have not spoken with anyone about
11 this deposition.

12 Q Okay. Please, give us the benefit of
13 your educational background, sir?

14 A Starting at what point?

15 Q Let's start with college?

16 A I have graduated Harvard College in
17 1931; Boston University School of Medicine, 1936;
18 Harvard School Public Health, 1941.

19 I don't know whether you call
20 internship education. I am not sure, okay.

21 Q I think that falls within --

22 A Medical internship, Boston City
23 Hospital, 1936 to 1937.

24 And, then, finally, a residency in

1 dermatology at the University of Chicago, Billings
2 Hospital, 1975, '76, '77.

3 Q After you graduated Harvard in 1931,
4 you didn't immediately start medical school, did
5 you?

6 A I was out for one year.

7 Q What did you do at that time?

8 A I worked.

9 Q Where did you work?

10 A I worked as an attendant for an old
11 gentleman who had Parkinson's disease in Boston.

12 Q After you served your internship, you
13 went directly to Harvard, for a master in public
14 health, is that correct?

15 A I did not. I took a position with the
16 Massachusetts Department of Public Health, as
17 assistant director of the venereal disease
18 program.

19 I went to the Harvard School of
20 Public Health, while I was in the Massachusetts
21 Department of Public Health in 1940 to '41.

22 So that, although I completed the
23 full course, I took over a two-year period, part
24 time, in order to retain the public health

1 position.

2 Q Who are some of your professors at
3 Harvard, for your master in public health?

4 A Long time ago.

5 I don't, I don't recall the names.
6 I'd, I'd have to have my memory refreshed. I
7 should remember the dean, because I knew him so
8 well; and he was, also, in the Massachusetts
9 Department of Public Health.

10 I don't remember the names of the
11 professors, at this point. I know them. If I saw
12 the list, I would know them all; but I don't
13 recall.

14 MR. SHAPIRO: Believe me, it's one of
15 the less important questions.

16 BY MR. EDELL:

17 Q During your education, at Harvard,
18 concerning your master in public health, did you
19 learn anything regarding cigarette smoking and
20 health?

21 BY THE WITNESS:

22 A I cannot recall, at that point in
23 history. I don't know whether we did.

24 Q Did you learn anything about

1 occupatioinal diseases?

2 A Yes, occupational health was part of
3 the curriculum.

4 Q After you graduated from the School of
5 Public Health at Harvard in '41, what did you do?

6 A I continued in the Massachusetts
7 Department of Public Health for, for a period,
8 until February, 1942, when I entered the U.S. Army
9 Medical Corp.

10 Q And how long were you in the Army
11 Medical Corp.?

12 A Until December, 1945.

13 Q And, then, what did you do?

14 A For most of that period, I was
15 Assistant Director of the Venereal Disease Control
16 Program of the U.S. Army.

17 Q After December, '45, what did you do?

18 A December, '45, I went to Peru as the
19 Chairman of the Health Commission to Peru of the
20 Institute of Inter-American Affairs, a wholly
21 owned government corporation, within the State
22 Department.

23 Q How long were you there?

24 A I was there until April, 1948, almost

1 [REDACTED] half-years.

2 [REDACTED] And then, what did you do?

3 [REDACTED] I left there to become Assistant

4 Secretary and General Manager of the American
5 Medical Association!

6 Q Secretary?

7 A Assistant Secretary and General
8 Manager.

9 Q Assistant Secretary?

10 A Actually, Assistant Secretary and
11 General Manager is one term.

12 Q What were your responsibilities?

13 A Well, I was the No. 2 man in the
14 organization, and my responsibilities were
15 really, to assist the the chief executive officer.

16 Q And who was the chief executive?

17 A Doctor George F. Lull, L-U-L-L . His

18 [REDACTED] secretary and general manager. In fact,

19 [REDACTED] was the chief executive officer.

20 [REDACTED] How long did you stay there?

21 [REDACTED]

22 [REDACTED] years. I was in that position until I

23 became executive vice president, until I became

24 the chief executive officer in 1968, and, then,

1 [REDACTED] 1975.

2 Q When was the first time you, in your
3 responsibilities, here, at the AMA, had any
4 contact with the subject of cigarette smoking and
5 health?

6 A I cannot answer that accurately. I
7 don't recall the first time.

8 Except to say, generally,
9 certainly, I was involved as the assistant
10 executive vice-president to, until I became
11 executive vice-president, I was involved in most
12 major activities and decisions, and programming of
13 the AMA in one way or another; but I cannot recall
14 the first time, that that subject became a, a
15 matter of discussion, either within the staff, or
16 before the House of Delegates.

17 Q Do you recall anything to do with the
18 [REDACTED] prior to
19 [REDACTED] the tobacco cessation of research
20 [REDACTED] the AMA-BHR program?

21 A I don't recall specific --

22 Q Do you recall anything at all, nothing
23 at all?

24 A I hate to say, no, but I don't recall,

1 [REDACTED] anything, at what time or what we

2 [REDACTED] at that time in history?

3 MR. SHAPIRO: I don't think Mr. Edell
4 told you, nobody wants you to guess. All
5 we want is your best recollection.

6 THE WITNESS: Yes. Thank you.

7 MR. EDELL: And the witness was
8 guessing?

9 MR. SHAPIRO: No, I didn't think he
10 was; but you didn't preface this with your
11 normal instructions about --

12 MR. EDELL: Excuse me.

13 MR. SHAPIRO: -- not guessing.

14 MR. EDELL: Excuse me, we don't want
15 you to guess, Doctor.

16 THE WITNESS: Thank you

17 BY MR. EDELL:

18 [REDACTED] going to the cigarette industry

19 [REDACTED] the research conducted by AMA-ERF,

20 [REDACTED] concerned about the harm of cigarette

21 [REDACTED] and health?

22 MR. PARRISH: Object to the form of the
23 question.

24 THE WITNESS: What did he say?

1 MR. EDELL: You can --

2 MS. ANDERSON: Object to the form of
3 the question. You can answer it.

4 MR. SHAPIRO: Just a technical, legal,
5 objection.

6 BY THE WITNESS:

7 A I find it difficult to answer that, the
8 way you asked it, because I don't -- the reason I
9 find it difficult is that, my recollection of my
10 actions, at that point, is not clear, is not clear.

11 BY MR. EDELL:

12 Q Okay.

13 A Without looking at specific actions, or
14 papers, or memoranda, I don't remember the exact
15 time.

16 MR. EDELL: Would you mark this for
17 identification, please.

18 (Whereupon said document
19 was duly marked by the
20 court reporter as
21 requested and made a part
22 of the record hereof.)

23 BY MR. EDELL:

24 Q Doctor Howard, I am going to show you a

1 document which is dated June 22, 1956. It's a
2 informational memorandum from Hill and Knowlton,
3 Inc.; and it contains two resolutions of the
4 American Medical Association House of Delegates.

5 Tell me whether or not this might
6 refresh your recollection?

7 BY THE WITNESS:

8 A Yes, this does refresh my memory.

9 Q In what way does it refresh your
10 memory, sir?

11 A Well, I recall this. AMA, certainly,
12 was interested in, and spoke strongly about
13 cigarettes and health.

14 In answer to the previous
15 question, I didn't remember when.

16 Q And when you say, it spoke strongly
17 about cigarette smoking and health, what do you

18
19 My recollection is, that the House of
20 Delegates -- I don't remember the exact time --
21 expressed it's concern regarding the relationship
22 between cigarette smoking and health.

23 Q Do you recall there being resolutions
24 over the years, beginning back in 1956, which

1 asked for a stronger position by the AMA on the
2 issue of cigarette smoking and health?

3 A I believe there were.

4 Q And do you recall the reasons why those
5 resolutions were defeated?

6 MR. PARRISH: Object to the form of the
7 question.

8 BY THE WITNESS:

9 A I can answer that question. There was
10 considerable debate on such resolutions, and there
11 always was some questions raised, that finally
12 tempered the action of the house, so that was less
13 strong than the proponents of a stronger stand
14 would have wished. This happened after discussion
15 and debate.

16 MR. EDELL: Can you read back the
17 witness' response, please.

18 (Whereupon the last answer
19 was read back by the
20 court reporter as
21 requested.)

22 BY MR. EDELL:

23 Q You say some questions were raised.

24 What types of questions are you referring to, sir?

1 THE WITNESS:

2 A Questions regarding the validity of the
3 research, indicating a cause and effect
4 relationship between cigarette smoking and
5 specific diseases, whether pulmonary cancer or
6 whatever.

7 Always the question of cause and
8 effect relationships, versus association, between
9 activity, which has always been a question of
10 research.

11 Association is easy to establish.
12 Cause and effect is much more difficult to
13 establish. So, there are many questions regarding
14 that basic, that basic problem, and research
15 ~~efforts~~ and conclusions.

16 Q When you say, it's easy to show a
17 relationship --

18 Association.

19 -- association --

20 Technical word.

21 Q -- as opposed to causation, how do you
22 show causation, as opposed to association?

23 A Well, you are asking a difficult
24 question to answer, which has been discussed at

1 [REDACTED] length in the scientific research
2 [REDACTED] literature. It is much more difficult to prove
3 that there is, that a certain action, or drug, or
4 whatever, causes an effect. Much easier to prove
5 that there's a relationship or association between
6 the two.

7 I just say that categorically,
8 without going into a detailed discussion.

9 Q Well, I won't -- I am looking for a
10 detailed discussion, sir.

11 A Well, I think I am not the one to give
12 it, because I am not sure of the research.

13 MR. SHAPIRO: I would object. I
14 understand the Doctor was, here, as a fact
15 witness, not an expert witness.

16 BY MR. EDELL:

17 [REDACTED] Well, Doctor, you were present at the
18 [REDACTED] ns, where people raised questions
19 [REDACTED] the issue of cigarette smoking and
20 [REDACTED] in deciding whether the AMA should adopt a
21 stronger position in regards to that subject?

22 BY THE WITNESS:

23 A Yes, I was, I was, here, at the time;
24 and I listened to many of those discussions.

1 Q And those discussions, as you told us,
2 result, in part, with the difference in studies
3 showing association as opposed to showing a cause
4 or relationship, correct?

5 A That's, in part, true. That isn't the
6 whole story, but it's part of the discussion.

7 Q When you say, that was part of the
8 discussion, what was the rest of the discussion?

9 A You are asking a question I can't
10 answer well, because this goes back many years;
11 and I don't recall all of the discussion.

12 This would have been one of, one
13 of many different activities, in which I was
14 involved, not a key activity of mine, as a member
15 of the staff.

16 Q Well, the American Medical Association
17 took the position that cigarette smoking had not
18 been shown to cause lung cancer in human beings
19 for many years, isn't that correct?

20 A I would have to look at the, I would
21 have to look at the literature, and look at the
22 House of Delegates, and specific words, and
23 actions, in answering that yes or no. I think
24 that's true; but, but for many years, the AMA did

1 [REDACTED] take the position, cigarette smoking causes
2 [REDACTED] lung cancer.

3 [REDACTED] Why did it take him that long?

4 [REDACTED] Because there were --

5 MR. PARRISH: Object to the form of the
6 question.

7 BY THE WITNESS:

8 A There were many questions that remained
9 to be answered.

10 BY MR. EDELL:

11 X Q What questions remained to be answered?

12 MS. ANDERSON: Would you like to
13 specify a year?

14 MR. EDELL: At any point, in time, the
15 Doctor can tell us, as to what years he is
16 referring to, in his response, that would be
17 satisfactory.

18 [REDACTED] THE WITNESS: I am not, I am sorry, I
19 [REDACTED] don't follow this.

20 [REDACTED] MS. ANDERSON: I asked, if he wanted to
21 specify a time frame, in which you were to
22 respond; and he said, no, that he would not
23 specify a time frame. A time frame would be
24 anything that is within your recollection.

1 THE WITNESS: Okay. What was the last
2 question?

3 MR. EDELL: Could you repeat the
4 question, please.

5 (Whereupon the last
6 question was read back by
7 the court reporter as
8 requested.)

9 BY THE WITNESS:

10 X A As I recall, the discussion of
11 subject, the basic question is, the cause of
12 cancer. /

13 And there still are questions
14 relating to that question, what causes cancer?

15 I happen to be an expert in
16 dermatology. I know something about cancer of the
17 skin, which I treat a great deal.

18 We dermatologists, for example,
19 ultraviolet radiation triggers cancer of
20 skin. Now, if you said to me, I am trying to
21 give an explanation, that relates to cigarette
22 smoking and pulmonary cancer, and give, give an
23 example, the same kind of discussion in relation
24 to skin cancer, if you discussed the question,

1. ...ultraviolet radiation cause skin cancer, it
2. ...would be difficult to say yes or no to that. I,
3. I, personally, would say, yes; but there is some
4. researchers who would say, it wouldn't. They say
5. there is a causal relationship between the
6. development of skin cancer from the skin; but what
7. the, what the exact or direct causation is, of the
8. change of the skin cell from a benign cell to a
9. malignant cell, is a, is a subject of continuing
10. research, what causes cancer?

11. And that's part of the problem,
12. here, that goes way back, all over these years, of
13. the discussion. We still don't know the, as far
14. as I know, we still don't know the cause of
15. cancer.

16. BY MR. EDELL:

17. So, it was AMA's position, during the
18. ...period, that it, it's position was that
19. ...did not cause cancer, that,
20. ...biological and statistical studies and
21. clinical observations, were not -- animal studies
22. were not sufficient to prove causation?

23. MR. PARRISH: I object to the form of
24. the question.

1 MR. SHAPIRO: I object to the form of
2 the question.

3 BY THE WITNESS:

4 A I repeat, that nobody, that I know of,
5 today, says he knows the cause of cancer.

6 BY MR. EDELL:

7 Q Can you answer the question?

8 A Whether a -- why a benign cell becomes
9 malignant?

10 MR. EDELL: Would you answer the
11 question, though, sir?

12 Would you repeat the question for
13 the witness.

14 (Whereupon the last
15 question was read back by
16 the court reporter as
17 requested.)

18 BY THE WITNESS:

19 That question cannot be answered for
20 the reason, when you say, was the AMA's position
21 that, what was the AMA's position -- The AMA's
22 position was, the position taken by the House of
23 Delegates, encompassing the exact words used by
24 that house. That's the AMA's position, and it,

1 changed from time to time.

2 The only way I can answer your
3 question is to say, you have got to go back to
4 each, individual resolution, adopted by the House
5 of Delegates in each year; and this, that we
6 discuss each resolution; and I will try to
7 interpret those for you, and what those words
8 meant; but I cannot answer it, generically, what
9 the AMA thinks.

10 BY MR. EDELL:

11 Q Well, was the AMA ever of the opinion,
12 that causation could, causation, vis-a-vis,
13 cigarette smoking and lung cancer, could be proven
14 in epidemiological studies?

15 MR. PARRISH: Object, generally, to the
16 form.

17 BY THE WITNESS:

18 A There's no way to answer that question,
19 using the words, AMA, that has no meaning.
20 What is the AMA?

21 At this point, it wasn't, it
22 wasn't Doctor Howard, or Doctor Blasingame. It
23 wasn't the board of trustees. It was the House of
24 Delegates, really, which, finally, makes policy.

1 And what the AMA believes, in
2 answer to your question, is what that House of
3 Delegates said, from year to year.

4 BY MR. EDELL:

5 Q And how does the House of Delegates
6 vote on the adoption of the AMA positions with
7 respect to the certain subjects?

8 A What do you mean, how?

9 Q Do they vote on resolutions?

10 A Yes, they -- every resolution is
11 considered. No resolution is, is, is set aside,
12 without being considered. It is either adopted,
13 rejected, or postponed, or put before the House of
14 Delegates as a body takes a definitive action on
15 every single resolution, unless something has
16 changed about it since I left here.

17 Q And how are the delegates appointed,

18
19 A That's all in the bylaws of the
20 association. I suggest you read the bylaws of the
21 association, which delineate, exactly, how each
22 and every delegate is appointed.

23 Q I appreciate your suggestion.

24 A It comes from different sources. I,

1 I'd like to have the bylaws.

2 Q You don't have any idea how?

3 A Of course; I have an idea.

4 Q I am asking?

5 A Bylaws, the delegates --

6 MR. SHAPIRO: I object. If he knows
7 the answer, fine. If he just has an idea,
8 even, I think we are wasting time.

9 BY THE WITNESS:

10 A I can give it to you from the Bylaws,
11 and tell you what it is, if you want it for the
12 record, here.

13 BY MR. EDELL:

14 Q Do you have any information, sir,
15 regarding how people are appointed as delegates to
16 the house?

17 A I have no information regarding -- in
18 the last ten years, since I have been, here, for
19 [REDACTED]; so, I don't know what amendments to the
20 [REDACTED] have been made.

21 Q During the time frame --

22 A When I was there, most of the delegates
23 were selected by the states on so many per
24 thousand AMA members; and that constituent

1. [REDACTED] association, AMA is a, is made up of, of
2. [REDACTED] constituent associations, which is the largest
3. portion, and those constituent associations elect
4. delegates to represent each state; and delegates
5. are, are elected more or less on a proportionate
6. basis.

7. BY MR. EDELL:

8. Q Did the AMA ever consider the social,
9. and legislative, and economic implications of
10. cigarette smoking and health, in deciding what
11. position it should take, concerning the issue of
12. cigarette smoking and health?

13. MR. PARRISH: Object to the form of the
14. question.

15. BY THE WITNESS:

16. A You see, the trouble with your question
17. is, did AMA -- you are really asking what the
18. [REDACTED] Delegates did, when it adopted a
19. [REDACTED] resolution; and what the words mean in each one of
20. [REDACTED] resolutions.

21. I suggest the only way to get a
22. specific answer, to the kinds of questions you are
23. posing, is pick out a resolution, in a given year,
24. and, and study it; and ask me if I listened to the

1 discussion, have any more information on the
2 resolution, itself.

3 BY MR. EDELL:

4 Q You have no information in regards to
5 the question that I asked you, is that correct,
6 sir?

7 A Not the way you have asked it, I cannot
8 answer that question.

9 Q And you can't answer, because I don't
10 have a specific resolution, is that what you are
11 saying?

12 A Yes. Your question is not specific
13 enough.

14 Q And you have no recollection as to --
15 independent of any specific resolution, as to
16 whether or not the social, or legislative, or
17 economic impact of cigarette smoking had any
18 impact on the decision-making process of the House
19 delegates, concerning cigarette smoking and
20 health, is that correct?

21 MR. PARRISH: Object to the form of the
22 question.

23 BY MR. EDELL:

24 Q Is that your testimony, sir?

1 BY THE WITNESS:

2 A I am thinking about your question.

3 Q Take your time.

4 A I believe you said, I have -- would you
5 repeat his question.

6 (Whereupon the last
7 question was read back by
8 the court reporter as
9 requested.)

10 BY THE WITNESS:

11 A I can answer that question, in the same
12 way that you have asked a very general question,
13 having listend to the discussion, I am sure that
14 many of the delegates considered the social,
15 political, economic, as well as scientific
16 aspects, of cigarette smoking and health, as they
17 reached their final decisions and voted.

18 I am sure of that, because they
19 intelligent men, who were aware of the, all
20 different aspects of this, of this complex
21 problem.

22 How they voted, finally, however,
23 I can't, I don't know what, finally, conditioned
24 their yes or no vote on a specific resolution..

1 MR. EDELL:

2 Q Were you ever involved directly or
3 indirectly, or involved in the lobbying efforts of
4 the AMA?

5 A Yes, the answer is, yes.

6 Q Beginning, what point in time, sir?

7 A 1940 -- I came here in '48, about 1949,
8 '50.

9 Q Did the AMA ever seek the help of the
10 tobacco lobby with respect to any legislation?

11 MR. PARRISH: Object to the form of the
12 question.

13 BY THE WITNESS:

14 A The AMA sought whatever help we could
15 get, from any source, wherever it came.

16 BY MR. EDELL:

17 [REDACTED]

18 MR. PARRISH: He has not finished
19 answering, yet, Marc. Let him finish his
20 answer.

21 BY THE WITNESS:

22 A When it came to AMA lobbying for the
23 passage of the defense legislation,
24 legislation in the health field, it sought help

1 [REDACTED]
2 MR. EDELL:

3 Q Now, will you answer the question, sir?

4 A What was the question, again, please?

5 MR. EDELL: Would you repeat it,
6 please.

7 (Whereupon the last
8 question was read back by
9 the court reporter as
10 requested.)

11 BY THE WITNESS:

12 I don't know whether or not,
13 since the lobbying was done in Washington; and I
14 didn't do that kind of lobbying. I wouldn't be
15 surprised. I have to add this, I wouldn't be
16 surprised. Help was sought from tobacco
17 interests, if they, if they were, if they had some
18 [REDACTED] with legislators; but I don't know
19 whether that was, that was true or not.

20 MR. EDELL:

21 Q Did the AMA try to avoid antagonizing
22 the tobacco lobby in its decision-making process,
23 concerning cigarette smoking and health?

24 MR. PARRISH: I object to the form of

1 the question.

2 THE WITNESS:

3 A I would say the AMA did just the
4 opposite. That the AMA, obviously, obviously,
5 took actions, and through its House of Delegates,
6 where policy is made, that was offensive to the
7 tobacco industry, certainly, not supported by the
8 tobacco industry; so, I would say, that the AMA,
9 clearly, through its House of Delegates actions,
10 did not seek to placate the tobacco industry.

11 BY MR. EDELL:

12 Q Does the AMA take any other actions,
13 other than through the House of Delegates?

14 A The main policies are established by
15 the House of Delegates. Actions are sometimes
16 taken by the board of trustees, in between
17 meetings of the house, especially, at times of an
18 emergency, or at the time when some action has to
19 be taken, later, to be considered and confirmed, or
20 approved by the House of Delegates; so, if the
21 board of directors of the, of the association, in
22 between meetings of the house, can become an
23 important policy making body, at least,
24 temporarily.

Q Do you recall the decision by the
American Medical Association, to accept finance
from the tobacco companies, to conduct research,
concerning cigarette smoking and health?

MR. PARRISH: Object to the form of the
question.

BY THE WITNESS:

A I don't recall the exact time; but,
yes, I recall there was discussion about that.

BY MR. EDELL:

Q Do you recall whether or not the AMA
was approached by the tobacco industry, or whether
the AMA approached the tobacco industry for
further funding?

A That I don't recall.

Q Were you instrumental in setting up
this funding program, through the AMA, with moneys
provided by the tobacco industry?

A I don't remember, exactly. I don't
think so, because I had no contacts in the tobacco
industry, or with the tobacco industry. At the
time, I knew no one from the industry; so, I don't
think there was any.

Q Do you know who, at AMA, was

1 instrumental in setting up that program?

2 A I don't remember.

3 Q You don't remember if Blasingame was
4 involved in that?

5 A I don't know.

6 Q Who is Doctor Blasingame?

7 A He was my predecessor, executive
8 vice-president of the American Medical
9 Association. He was on the board for many years.
10 He became vice-chairman of the board, and a member
11 selected by the board, to be executive
12 vice-president. I forgot the exact dates.

13 Q Do you know where he is, today?

14 A Pardon me?

15 Q Do you know where he is, today?

16 Is Doctor Blasingame still alive?

17 A As far as I know, he is.

18 Do you know where he lives?

19 I have had no contact with him for
20 years.

21 MR. EDELL: Would you mark this,
22 please, for identification, please.

23 (Whereupon said document
24 was duly marked by the

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] court reporter as
4 [REDACTED] requested and made a part
5 [REDACTED] of the record hereof.)

6 BY THE WITNESS:

7 A In answer, do you know where he lives,
8 he used to live on Astor Street; but I don't know
9 where he lives, today.

10 BY MR. EDELL:

11 Q I am going to show you a document which
12 we have marked as Howard 2 for identification.
13 It's a letter from -- first page of it is a
14 business letter from Fred Haas, to Zach Toms of
15 Liggett & Myers. It attaches a letter from Doctor
16 Blasingame to the Chief, Division of Trade
17 Regulation Rules Bureau of Industry Guidance
18 Federal Trade Commission of February 28, 1964.

19 In which Doctor Blasingame states,
20 [REDACTED] the AMA's position, that there should
21 [REDACTED] labeling of cigarettes.

22 Do you recognize Doctor
23 Blasingame's signature on the last page of that
24 document, sir?

25 A I am surprised to say, I don't. I know
26 his signature, but I don't recognize that as his

1 [REDACTED] signature. It may be, but I don't recognize that.

2 [REDACTED]

3 [REDACTED]

4 A He was executive vice-president of the
5 American Medical Association.

6 Q And in that position, was he authorized
7 to prepare letters such as that, which is attached
8 to Howard 2 for identification; and take your time
9 to read the letter, sir.

10 MR. SHAPIRO: I object to the form.

11 BY THE WITNESS:

12 A Okay.

13 MR. EDELL: Read the question back,
14 please, to the witness.

15 (Whereupon the last
16 question was read back by
17 the court reporter as
18 requested.)

19 MR. SHAPIRO: Show my objection to the
20 form of that.

21 BY MR. EDELL:

22 Q You can answer the question.

23 BY THE WITNESS:

24 A The question is, as I understand it,

1 [REDACTED] the executive vice-president, at that
2 [REDACTED] Doctor Blasingame, had the authority to
3 write this letter, on behalf of the American
4 Medical Association, which he opposed certain
5 proposals appearing of the Federal Trade
6 Commission, that had appeared in the register?

7 Generally speaking, this kind of
8 policy position, would be considered by the House
9 of Delegates. I have to presume that Doctor
10 Blasingame acted within his authority, on the
11 basis of recommendation from appropriate staff;
12 and that, probably, at some subsequent time, this
13 was confirmed the House of Delegates, although, I
14 am not sure. I am not sure of that.

15 My answer is, in short, is that I
16 am sure that Doctor Blasingame would have not
17 written a letter, had he not been authorized, in
18 [REDACTED] on, to do so.

19 [REDACTED] Do you recall there being a discussion
20 [REDACTED] warning what position the AMA should take,
21 concerning placing cautionary --

22 A I don't recall.

23 Q -- warning labels on packages of
24 cigarettes?

1 MR. PARRISH: Object to the form of the
2 question.

3 BY THE WITNESS:

4 A Frankly, I should recall this, because,
5 as I said, earlier, I was, I was a participant in
6 so many of these discussions, along with Doctor
7 Blasingame; but I don't recall this particular
8 discussion of the value of cautionary labeling, as
9 contrasted with the value of other actions,
10 research, and so forth.

11 Q Do you recall that, this letter by
12 Doctor Blasingame, of February 28, 1964, came hot
13 on the heels of the agreement by the tobacco
14 industry, to fund this multi-million-dollar
15 research through the AMA-ERF?

16 MR. PARRISH: Object to the form of the
17 question.

18 BY THE WITNESS:

19 A I do not recall that, no.

20 MR. EDELL: Would you mark this for
21 identification.

22 BY THE WITNESS:

23 A You are indicating a relationship
24 between the two. I don't recall that.

(Whereupon said document
was duly marked by the
court reporter as
requested and made a part
of the record hereof.)

BY MR. EDELL:

Q I show you a document which we have
marked as Howard 3 for identification. That's a
letter of January 17, 1964, addressed to the
American Medical Association Education and
Research Foundation, executed by the president of
the American Tobacco Company, the president of
Brown & Williamson Tobacco Corporation, the
president of Liggett & Myers Tobacco Company, the
president of the P. Lorillard Company, the
president of Philip Morris Incorporated, the
president of R. J. Reynolds Tobacco Company, which
organized those companies agreement to provide
AMERF with two million five hundred
thousand, one million, one million, one million,
one million, and three hundred -- and three
million five hundred thousand dollars,
respectively, and see if that refreshes your
recollection that Blasingame's letter to the

1 [REDACTED] Federal Trade Commission, concerning the labeling
2 [REDACTED] cigarettes, concerning the potential health
3 hazards that came out, hot on the heels of the
4 agreement by the tobacco companies, to provide
5 millions of dollars to the AMA-ERF for certain
6 research?

7 BY THE WITNESS:

8 A I don't think you are asking a --

9 MR. PARRISH: Object to the form of the
10 question.

11 BY THE WITNESS:

12 A I don't think you are asking a
13 question. I think you are trying to making a
14 statement.

15 MR. SHAPIRO: We will object to the
16 form of it any way.

17 MR. EDELL: You have got it. Do you
18 [REDACTED] the question read back, sir?

19 [REDACTED] WITNESS:

20 [REDACTED] A It doesn't have to be read back. I
21 think it's so general, as to -- it's objective is
22 clear. I have already answered the question, that
23 I do not recall any relationship between this
24 action, here, spelled out in this letter of

9
1 January 17, and his letter, Doctor Blasingame's
2 letter to the Federal Trade Commission.

3 BY MR. EDELL:

4 Q Your review of that letter doesn't
5 refresh your memory in that regard, is that
6 correct?

7 MR. PARRISH: Asked and answered.

8 BY THE WITNESS:

9 A My memory doesn't need refreshment. I
10 do not recall any relationship between this
11 letter, and the action of Doctor Blasingame, with
12 respect to labeling as proposed by the FTC.

13 BY MR. EDELL:

14 Q Do you know what precipitated Doctor
15 Blasingame's interest in the Federal Trade
16 Commission's decision to place health warnings on
17 packages of cigarettes?

18 MR. PARRISH: Object to the form of the
19 question.

20 BY THE WITNESS:

21 I do not know exactly.

22 BY MR. EDELL:

23 Q Just an interest?

24 A I do not know why his letter was.

1 [REDACTED] Certainly, it was a matter of public
2 [REDACTED] health. It was a, it was an action proposed by a
3 [REDACTED] Federal agency, that was within the field of
4 [REDACTED] health. The AMA could have appropriately taken a
5 [REDACTED] position on that.

6 Q Do you have, do you have any
7 information, as to whether or not, any
8 representative of any tobacco company, requested
9 Doctor Blasingame to write the letter, which is
10 attached to Howard 2 for identification?

11 A I do not. I have no knowledge of such
12 a request.

13 Q Do you have any knowledge, as to
14 whether or not such a request was not made?

15 A How can one answer a question like
16 that?

17 Q Well, I want to know whether or not, in

18 [REDACTED] --
19 [REDACTED] You asked --

20 [REDACTED] It's very --

21 A I would like to have that question
22 read, I would like to ask you what kind of
23 question is that, two negatives.

24 Q Let me --

1 A Absolutely unanswerable.

2 Q I don't want to argue with you, sir. I
3 will try to rephrase it.

4 A I am arguing with you on the question.

5 Q It's apparent that --

6 A The question should be clearer.

7 Q -- all you have to do is ask --

8 A Repeat that question.

9 Q -- that I formulate a new question for
10 you, sir.

11 A Thank you very much.

12 Q Do you have any information, as to
13 whether or not, any tobacco company, requested
14 Doctor Blasingame, to write the letter, which is
15 attached to Howard 2 for identification?

16 A I do not have any such information or
17 recollection.

18 Q What, if any, role did you have, in
19 registering, or monitoring, or otherwise,
20 concerning the AMA-ERF program, which was funded
21 by the tobacco companies?

22 A Well, as executive vice-president of
23 Blasingame, later, as executive vice-president of
24 the whole AMA-ERF program, answered to the EVP's

1 [REDACTED] and was under the general management,
2 [REDACTED] we say, supervision, without direct
3 objection or operational responsibility, to the
4 EVP, through the EVP, to the board; but we had, we
5 had a relationship in terms of staff, to any staff
6 function; and the AMA-ERF was a group of staffers
7 performing research. They had great freedom;
8 however, we gave them, we, Doctor Blasingame and I
9 gave the ERF great freedom to carry out their
10 research, without undue restrictions from the
11 executive director's office.

12 Q How are these people appointed, sir?

13 A They were appointed by, I think, by the
14 executive vice-president, probably, with the
15 agreement of the board, especially, the budgetary
16 hearing, because a salary would have to be set;
17 and the board of trustees would have to approve
18 [REDACTED] specifically, for that person.

19 [REDACTED] So, although the executive
20 [REDACTED] president would have prime responsibility, to
21 seek out and identify appropriate personnel for
22 the research foundation, it would have to go to
23 the board, at the budget hearing.

24 Q For approval?

1 [REDACTED] For approval. Now, recommendations for
2 [REDACTED] personnel, obviously, after the director of the
3 research foundation was appointed, recommendations
4 for, from him, through the executive
5 vice-president, to the executive vice-president,
6 would carry great weight. In other words, he
7 would have great responsibility.

8 MS. ANDERSON: May I ask a question?

9 MR. EDELL: Off the record.

10 (Whereupon a discussion
11 was held off the record.)

12 THE WITNESS: I miss understood your
13 question.

14 BY MR. EDELL:

15 Q I was talking about the committee on,
16 on research and tobacco and health?

17 BY THE WITNESS:

18 [REDACTED] Tobacco and health?

19 [REDACTED] How are those people appointed, sir?

20 [REDACTED] Those are appointed by the board of
21 trustees.

22 Q And whose responsibility was it, to
23 obtain candidates, to be presented to the board of
24 trustees?

1 Literally, anyone; but, obviously, the
2 responsibility, would be from the chairman
3 of the committee, and other members of the
4 committee; but the executive --

5 Q Before the committee was --

6 A Executive office, also, did their best
7 to assist in the identification of top researchers
8 in the country for this committee.

9 Q Before that, the committee, before
10 there was a person on the committee, whose
11 responsibility was it, to come up with the names
12 of people who were candidates for that committee
13 on research on, on tobacco and health?

14 A Executive vice-president.

15 Q And that was Doctor Blasingame?

16 A Uh-huh.

17 Q Did you play any role?

18 A I always played a role in most of these
19 projects, yes. That was Blasingame's policy. So
20 I played a role, frequently.

21 Q Will you tell us, will you tell us what
22 happened in 1964, after the funding came through
23 the tobacco companies, to gather together the
24 names of individuals who were likely candidates,

1 [REDACTED] committee?

2 A All I recall is, that we relied,
3 basically, on the judgment of the chairman of the
4 committee, of a very famous professor from
5 Michigan, whose name I have forgotten, for the
6 moment, who was chairman, and who was considered
7 one of the top researchers in the United States,
8 for many years, on the question of tobacco and
9 health.

10 I think he is professor of
11 pharmacology at the University of Michigan, but I
12 am not sure we relied on him to give us the names.

13 Q Well, how did you decide, say -- I
14 mean, the American Medical Association, decide
15 that that particular individual should become a
16 chairman of the --

17 A Because of his research, because of his
18 [REDACTED] reputation, and his publications, and
19 [REDACTED].

20 He, also, has been a member of the
21 Council on Pharmacy and Chemistry for years. I
22 believe my recollection is correct, he was
23 well-known to the AMA, being a researcher and top
24 pharmacologist.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 considered for the chairman position of this
5 committee?

6 A I believe so. I think that's true.

7 Q And who came up with the proposal for
8 him, Doctor Blasingame?

9 A Probably.

10 Q And it was, then, Doctor Seevers?

11 A It could have come from any member of
12 the board, you see, too; but, usually, the EVP
13 played a key role in suggesting nominees.

14 Q And after Doctor Seevers was identified
15 as the person who should chair the committee for
16 research on tobacco and health, it was, then, his
17 responsibility to --

18 [REDACTED] responsibility, to
19 [REDACTED] a panel of names for the AMA, in this
20 [REDACTED] the EVP and the board to consider.

21 Q Did -- were the names of the
22 individuals who became members of the committee on
23 research on tobacco and health, submitted to the
24 funding companies at this point in time, before

1 ... these people were appointed?

2 A The answer is, no.

3 Q Do you recall meeting with
4 representatives of the tobacco companies, to
5 discuss the work of the AMA-ERF program, which
6 they were funding?

7 THE WITNESS: Am I right that
8 AMA-ERF -- did you say, B.J., the AMA-ERF was
9 not the, was not being funded by the tobacco
10 people, it was the committee on tobacco and
11 health?

12 MS. ANDERSON: AMA-ERF.

13 THE WITNESS: Oh, it was the AMA-ERF,
14 okay. Please, repeat his question.

15 (Whereupon the last
16 question was read back by
17 the court reporter as
18 requested.)

19 THE WITNESS:

20 A I do not recall meeting with them. I
21 think I did not. I don't think Doctor Blasingame
22 did, specifically, meet with them, regarding the
23 research as it was carried on.

24

MRS. EDELL:

Q Did either you or Doctor Blasingame, ever meet with representatives of the tobacco industry?

A I don't know if Doctor Blasingame and I met with all of them, with a key number, there, at one point, in the board room to discuss an action, very important action of the House of Delegates with respect to tobacco and health. I have forgotten the exact resolution. It may have been reported in this committee, a two-year report of this committee on tobacco and health. I have forgotten the exact document; but I met with all of them, at one point, to report to them.

Q Do you recall, approximately, when that occurred, sir?

A I don't. You mean, the year?

Yes.

I will have to guess.

Q I mean, unless --

A I don't recall the exact year.

Q Do you know whether it was in the 50's or the 60's?

A It was in the 60's, no, no, this was in

1 [REDACTED] I may have been the EVP at that point.

2 [REDACTED] It may have been '68, '67. I am
3 not sure.

4 MR. EDELL: Would you mark this for
5 identification.

6 (Whereupon said document
7 was duly marked by the
8 court reporter as
9 requested and made a part
10 of the record hereof.)

11 BY THE WITNESS:

12 A I will have to look at the report.

13 BY MR. EDELL:

14 Q You say that you have to look up the
15 report, what report, sir?

16 A The report that I presented to them, as
17 a summary, with any questions answered, that they
18 [REDACTED] ask me of what the House of Delegates
19 [REDACTED] respect to the tobacco and health.

20 [REDACTED] You prepared a report?

21 A No. This was the House of Delegates
22 report.

23 Q Did you maintain any files, while you
24 were, here, with the AMA?

1 [REDACTED] Any files?

2 [REDACTED] Files?

3 A I maintain, personally, files?

4 Q No, did you maintain files, for your
5 business, that you conducted, while you were,
6 here, with the AMA?

7 A I am sorry, I don't understand your
8 question. I had no files, that I maintained,
9 separate from the files of the AMA, that my
10 secretary would maintain, and that would be with
11 AMA.

12 Q That's what I meant, sir.

13 A No, I don't.

14 Q In other words, you sent out a letter,
15 a secretary would maintain a copy of that?

16 A Okay. I understand your question. I
17 maintained no files.

18 [REDACTED] Where did the copies of correspondence

19 [REDACTED]
20 [REDACTED] I would have to ask the secretary. I
21 don't know where they all went.

22 Q In other words, you don't, you don't --

23 A I didn't keep the files. My secretary
24 did, and I can't answer the question.

1 Who is your secretary, sir?

2 Oh, I had about four or five different
3 secretaries, during those years. The chief
4 person, however, in the secretariat, was Ellen
5 Barry, B-A-R-R-Y .

6 Q I show --

7 A She was the secretary of the board of
8 trustees; and she was sort of the chief secretary
9 of the AMA, for many years.

10 Q I am going to show you a document which
11 has been marked as Howard 4 for identification.
12 It's a summary of the minutes of the meeting of
13 the committee for research on tobacco and health,
14 January 30, 1968.

15 It lists, as participants, Doctor
16 Seevers, Doctor Bing, Doctor Hasterlik, Doctor
17 Hickam, Doctor Kotin, Doctor Larson, all of which
18 all of whom were members of the committee
19 research on tobacco and health; and it has
20 executive representatives and legal
21 counsels for the tobacco industry.

22 Then, there's representatives for
23 the tobacco industry and research, and the
24 American Medical Association. I would like you to

1 [REDACTED] this document, and see if it refreshes
2 your memory, with respect to the meeting which you
3 attended, concerning the work being funded by the
4 tobacco companies through the AMA-ERF program?

5 MR. PARRISH: Is there a question
6 pending?

7 MR. EDELL: I think there was.

8 MR. PARRISH: What is it?

9 I thought he said he didn't
10 remember.

11 MR. EDELL: He said he remembered a
12 meeting, at which he spoke to people in the
13 board room, at which --

14 THE WITNESS: This is, obviously, a
15 different meeting.

16 MR. EDELL: Thank you.

17 THE WITNESS: [REDACTED] memorandum

18 [REDACTED] present,

19 [REDACTED] I was not able to recall the

20 [REDACTED]
21 BY MR. EDELL:

22 Q Do you recall that in 1968 -- strike
23 that.

24 Was it the position of the AMA, in

1 [REDACTED] tobacco
2 [REDACTED]
3 further research was necessary?

4 MR. PARRISH: Object to the form of the
5 question.

6 BY THE WITNESS:

7 A I see that sentence, in here, quoting
8 the paragraph, reporting, Doctor Blasingame, which
9 you have underlined.

10 BY MR. EDELL:

11 [REDACTED] I didn't underline it.

12 A Somebody has underlined it.

13 [REDACTED] That's how the document came to me.

14 A I see.

15 That sentence surprises me.

16 That's all I can say.

17 [REDACTED]

18 [REDACTED] It surprises me that it was put so
19 [REDACTED] and that the AMA, in 1968, believed no
20 causal relationship had been established; however,
21 I said, earlier, in this testimony, that we don't
22 know the cause of cancer, even today.

23 Of skin cancer, or pulmonary
24 cancer, or whatever, we don't have the definitive

1 answer to that question, yet; and I think that
2 sentence reflects that basic feeling; but it is
3 put too boldly in that memorandum.

4 It should have been explained
5 somewhat better.

6 Q Why do you say it should have been
7 explained somewhat better, sir?

8 A I think the question of causation of
9 cancer, should have been presented, first; and in
10 that context, the statement, we cannot say what
11 causes pulmonary cancer, specifically, because the
12 general causation of cancer is unknown. I think
13 that would have been a better presentation.

14 Q Why, why do you feel that would have
15 been a better presentation?

16 A I think that's clearer. I think it's
17 more, I think it's nearer the truth,
18 substantively, in terms of what we know and don't

19
20 And just so we are clear, this, this,
21 this meeting was not the meeting that you referred
22 to, previously, at which --

23 A Oh, no, I referred to another meeting,
24 entirely, in which I, simply, presented, what the

1 use of, what the House of Delegates had done, to
2 them.

3 I believe they had asked for the
4 meeting.

5 Q Do you recall what, what the resolution
6 was?

7 A It was a very strong resolution, with
8 respect to tobacco and health; and, here, we would
9 have to look up the documents. It was one of the
10 strongest the AMA had developed, as I recall it.

11 Q And why was there a meeting to discuss
12 this with the tobacco companies?

13 A To get the full impact of the
14 resolution, to ask some questions, and to try to
15 understand what AMA's position was, as I
16 understand it, of the house of, House of
17 Delegates, what the position was. I could tell

18 I gave the tobacco industry's
19 representatives, a very, a very disturbing

20 picture.

21 Q What do you mean, disturbing?

22 A What the AMA's position was, and what
23 the AMA was thinking, regarding the relationship
24 between tobacco and health.

1 [REDACTED] What was their thinking, that you are
2 [REDACTED] thinking to?

3 A The thinking was, that the AMA was
4 moving closer and closer to a position, that, that
5 tobacco and pulmonary cancer, clearly, were
6 related.

7 Whether one could say causally or
8 not, with one of those scientific addendums, a
9 scientific question, it's difficult to answer.

10 Q And what was, do you remember who
11 attended that meeting on behalf of the tobacco
12 industries?

13 A I don't remember the names; but these
14 were the top officers, chairman, president of six
15 or seven tobacco companies.

16 Q All of the funding companies?

17 A Yes, most of them were funding

18 [REDACTED]

19 [REDACTED] Q Were their legal counsel there?

20 [REDACTED] A I don't think there was any legal
21 counsel there.

22 Q Did you have anyone present,
23 representing the AMA, other than yourself?

24 A I was alone.

1 Q Were there any minutes taken of that
2 meeting?

3 A I don't think so. There was no need to
4 keep minutes. It wasn't that kind of a meeting.
5 It was just an informational presentation by me to
6 the officers of the companies.

7 Q And your recollection is, that it, that
8 meeting took place sometime in the 60's or 70's?

9 A Oh, yes, probably '68 or somewhere in
10 there. I suspect I was EVP at that point. I
11 don't think I would have done it. I would have
12 been the staff member to do it, had I not been the
13 chief executive officer, at that time; so, it must
14 have been '68 or '69, possibly.

15 Q Well, you weren't executive, EVP in
16 '68, January, '68.

17 A No. It happened in '68, later. If I
18 have the dates, this is the date I ought
19 to have. B.J. I think it's '68, something, about
20 September, '68.

21 Q When was, when was the decision made,
22 that the funding by the tobacco companies, through
23 the AMA-ERF program, would be discontinued?

24 A I don't remember when.

1 Q Do you remember why?

2 A Not clearly, no, I don't remember why.

3 Q Did you ever receive any information,
4 concerning the tobacco companies evaluation of the
5 effectiveness of the research conducted through
6 the American Medical Association Education and
7 Research Foundation, concerning cigarette smoking
8 and health?

9 A I may have; but I don't recall, without
10 a document or some memo. I don't recall exactly,
11 whether they communicated their reaction.

12 MR. EDELL: Okay. Would you mark
13 this.

14 (Whereupon said document
15 was duly marked by the
16 court reporter as
17 requested and made a part
18 of the record hereof.)

19
20 MR. EDELL:

21 Q I am going to show you a document we
22 have marked as Howard 5 for identification. It's
23 entitled, comments of AMA-ERF program for tobacco
24 and health, from the research directors of the.

marketing companies.

2 I am going to direct your
3 attention to the following language, quote, the
4 general opinion of the scientific representatives
5 was that not more than 50 percent of the program
6 was relevant to smoking, period, close quote; and,
7 then, under recommendations, one, quote, bring to
8 the attention of the AMA-ERF Board of Directors
9 and the Committee for research on tobacco and
10 health the apparent shortcomings of the existing
11 program as outlined above, period, close quotes.

12 Do you recall that, sir?

13 MS. ANDERSON: Is the document dated?

14 MR. EDELL: I believe the document
15 refers to a meeting --

16 THE WITNESS: May 6th.

17 through 8, 1970.

18 THE WITNESS:

19 I don't recall ever seeing this

20 MR. EDELL:

21 Q Did -- do you ever recall receiving the
22 information that's referred to in the document,
23 sir?

24 A I, vaguely, recall that there was

1 criticism of this type. I don't recall seeing
2 a specific memorandum; but I believe, I do
3 recall, there was criticism that too much of the
4 research was basic science, not clearly related to
5 tobacco and health, per se; but basic science,
6 types of research.

7 Q And with a criticism by the tobacco
8 companies?

9 A I believe so.

10 Q And what, if anything, was done about
11 that criticism?

12 A Criticism wasn't accepted as valid.
13 That I recall, clearly, that thought was not
14 acceptable.

15 Q Was there a meeting to discuss that,
16 the criticism?

17 A I don't recall any meeting.

18 Q Well, did you speak to Doctor Seevers;
19 and did he relate that information?

20 A I spoke to Doctor Seevers, many, many
21 times.

22 Q Well, did --

23 A So, I had a, I have a very, a very deep
24 understanding and knowledge of what Doctor Seevers

1 thought about all of this research. We have --
2 very close friends, and did I speak to him on
3 many occasions.

4 Q Well, what was Doctor Seevers feelings
5 and understandings regarding this research?

6 A Well, basically, Doctor Seevers felt
7 very strongly about the relationship between
8 tobacco and health.

9 Q What do you mean, he felt --

10 A He felt very strongly that they were
11 closely related.

12 Q That cigarette smoking was closely --

13 A Yes.

14 Q -- related to what disease, pulmonary
15 cancer?

16 A However, Doctor Seevers, also, was a
17 top-notch-research-scientist; and he, he was
18 about that word, causation, just as we
19 discussed it, here, earlier.

20 What else can you tell.

21 Q I don't know, whatever else. You know
22 Doctor Seevers.

23 A I can only say that Doctor Seevers has
24 my deepest respect as one of the top researchers

1 the country; and he felt very strongly about
2 this subject. He felt there was a very close
3 relation between the constituents of the tobacco
4 smoke. We showed there was five hundred drugs in
5 tobacco smoke. We continue to -- there are
6 nicotines and tars; but there's hundreds of drugs
7 in tobacco smoke; and that's what made the whole
8 research project difficult and complex, that there
9 were so many things to try and research.

10 Q Do you recall meeting with a
11 representative from the Tobacco Institute?

12 A I don't recall that. I may have, but I
13 don't recall such a meeting.

14 Q Who is -- I am sorry?

15 A Go ahead.

16 Q Who is Frank Champion?

17 A Champion, director of, of communications
18 editor of the AMA news. For, for awhile, he
19 has been director of public relations, too.
20 I don't recall.

21 Q Do you know Ted Braun?

22 A Ted Braun, yes, was an outside
23 consultant firm. This, we used for some years,
24 way back in 1949, '49, '51, in there, during the

1. [REDACTED] General outside consultant regarding medicine?

2. Mr. Schuman's compulsory health
3 insurance program. Ted Braun was used at that --
4 wait a minute, I take that back. I am confused.

5 It was Ted Braun, though, was an
6 outside consultant, used by the AMA, for many
7 purposes. That's right. He was used as a general
8 outside consultant. I was incorrect about the
9 early 1948, 49. That was Witzer & Baxter.

10 Q General outside consultant regarding
11 what?

12 A Public relations, in general. Mr.
13 Braun, really, consulted with me, and closely with
14 me, on public relations, in general. He was,
15 also, used, as necessary, as needed, in any
16 legislative campaigns that we were conducting; but
17 he was, basically, an outside, overall, general
18 public relations consultant.

19 Q And do you recall, during what years he
20 worked in that capacity?

21 A I, I should, that's -- let's say, I
22 should recall. I think it was 19, just guessing,
23 1965, '69, somewhere in there.

24 Q That's when it began; or is that, that

1 [REDACTED] --

2 [REDACTED] A It's in that period. I think I was EVP
3 when this, when he -- I am not sure of the dates.
4 I should remember this, because, we had a long
5 relationship; and it was very close.

6 Q When you say long relationship, did it,
7 when you say '65, '69, did it, do you think it
8 began at that point in time, and extended forward?

9 A It extended for several years, three or
10 four years, until we, finally, terminated.

11 MR. EDELL: Would you mark this,
12 please.

13 (Whereupon said document
14 was duly marked by the
15 court reporter as
16 requested and made a part
17 of the record hereof.)

18 MR. EDELL:

19 [REDACTED] I am going to show you a document that
20 [REDACTED] as Howard 6, for identification. It's a
21 memorandum of September 3, 1971; and see if that
22 refreshes your memory, with respect to meeting
23 with a representative of the Tobacco Institute?
24

THE WITNESS:

2 A All right. I have read the memorandum.

3 Q Does that refresh your memory with
4 respect to a meeting?

5 A I have never seen this memorandum
6 before.

7 Q I would suspect not. The question is,
8 does it refresh your recollection, with respect to
9 your meeting with a representative of the Tobacco
10 Institute?

11 A No, I don't recall ever meeting with
12 them, with a representative of the Tobacco
13 Institute.

14 Q Do you remember meeting with a
15 gentleman by the name of Bill Kloepper?

16 A I don't. He says he met with me, but I
17 don't recall meeting with him.

18 Q Do you recall any of the facts?

19 A As I say, I am not saying he didn't
20 meet with me. I do not recall meeting with him,
21 as he said he did.

22 Q Do you recall any of the facts which he
23 stated in the memorandum?

24 MR. PARRISH: Object to the form of the

1 question.

2 THE WITNESS:

3 A He makes statements, here, which I
4 recall, which I think are, are accurate. Be hard
5 for me to take out the various statements. This
6 is a long --

7 BY MR. EDELL:

8 Q Well, take your time, sir.

9 A I think it's correct, he says AMA -- he
10 says that I said, AMA is not prepared to make any
11 statement, at this point, September 3, approximately,
12 approximately, that date, AMA is not prepared to
13 make any statements regarding determination of the
14 smoking-health research program. I think that's
15 correct, at that point.

16 I am reading, again, knows of no
17 [REDACTED] further damage the
18 [REDACTED] industry.

19 I don't know what he means by
20 [REDACTED] comment on that portion of the
21 paragraph is, I don't know what he means.

22 Reading, again, is under no
23 internal pressure to make any move at this time in
24 the matter. I think that was correct. There was

1 internal pressure to make any more money
2 at that time, at that time, in the matter.

3 Let me summarize the situation, at
4 that time, as I recall it. The tobacco industry
5 was in the process of removing itself from this
6 research. It was unhappy about the nature of the
7 research, of which was mostly, basic science.

8 And, certainly, there was nothing
9 in the research, as it was pursued, and as it was
10 translated into publication, that could have
11 pleased the tobacco industry.

12 So, the industry was in the
13 process of withdrawing its support. It says,
14 here, he, in this -- reading from the memorandum,
15 again, Braun told me, that our purpose in seeing
16 Howard was to notify him the executive committee
17 had rejected a recommendation that surplus ERF
18 funds be earmarked for minority group
19 students support.

20 I don't recall that. It may be
21 true, executive committee -- maybe the executive
22 committee of the Board of the AMA. I don't know.

23 I don't know who made this
24 recommendation. This surplus ERF tobacco funds be

marked for minority group medical students
support.

This memorandum, from which I am
reading goes on to state, that the recommendation
had come from Doctor Kernodle. I don't know if
that's true or not.

Q Who is Doctor Kernodle, sir?

A He was vice-chairman of the AMA board
of trustees.

Q He was, also, on the board of
directors --

A He was.

Q -- of the AMA-ERF program?

A He was, also, vice-chairman of the ERF,
according to this, ERF board of trustees. He may
have been.

I responded, according to this
[REDACTED] funds be
[REDACTED] students, that we would be
[REDACTED] supporting already approved
projects.

Memorandum indicates that the
current letter of agreement from the companies to
AMA, evidently stipulates that in no event are any

1 ...to be returned to the contributors. I
2 ...all, that's correct.

3 This paragraph, then, continues to
4 outline the funds that were available, information
5 that came from me. I assume is, that's correct.

6 I indicated that there was no
7 reason why AMA should announce that it is ending
8 all its research programs. Apparently, it was a
9 request that had come from the tobacco people,
10 although that isn't clear to me, in this.

11 The next paragraph says that I
12 regarded the program as a great liability, which
13 is correct, I did.

14 Q Why is that, sir?

15 A Because the tobacco support for
16 financing the program, which I always disagreed
17 with, and is explained in this sentence, I thought
18 ...was not the right source of funding, for the
19 ...designed to study the relationships
20 between tobacco and health.

21 The next sentence, here, reads, he
22 said, Howard said, from the industry standpoint,
23 the research has produced no evidence to clear
24 cigarettes from the generally accepted conclusion,

1 they cause lung carcinoma and other maladies,
2 it is correct.

3 He said, Doctor Howard said, he
4 thought the latter point would be widely reported
5 as the reason the industry decided to terminate
6 the program, regardless of what is said by other
7 parties about it. I agree with that statement.

8 Whether I said it or not, I agree
9 with it.

10 Q Okay.

11 A Howard, also, said, he is most anxious
12 to avoid any incident which will create
13 displeasure with AMA among tobacco area
14 Congressmen. He said AMA needed their support
15 urgently. I said that; and it is true, we wanted
16 their support, as well as anyone else's support, in
17 the Congress or the Senate, with respect to

18 the situation, in which we were profoundly involved.

19 Legislation, which we said, at the
20 time, and I say, now, involved, a very freedom of
21 the position to practice medicine, according to
22 the context, that they think necessary, to promote
23 quality medicine.

24 Next paragraph, he was told that

1 I won't comment -- there's nothing
2 comment on that.

3 I am talking, now, for your
4 information, the paragraph two, on page two, of
5 this memorandum.

6 Q Page three?

7 A Page three. I am trying to help you.
8 Page three, that's right.

9 All right. I have no comments on
10 paragraph three, four, five, six. There's nothing
11 for me to add to that memorandum.

12 Q Had you, tentatively, agreed, when I
13 say you, I mean, you, on behalf of AMA, to state
14 that AMA was going out of the business of
15 research?

16 A Never. It wasn't true, never was true.
17 We weren't going out of the business of research.

18 I am going to show you a document which
19 mark as Howard 7.

20 We were closing out the medical
21 institute. We may have already closed it out,
22 here. I think there may be some confusion about
23 going out the business of research, and continuing
24 to operate a research institute, which we did go

16

1 out of, which we did close for the lack of funds.

2 (Whereupon said document
3 was duly marked by the
4 court reporter as
5 requested and made a part
6 of the record hereof.)

7 BY MR. EDELL:

8 Q I am going to show you a document we
9 have marked as Howard 7, for identification.
10 First page of which is an agenda of the 42nd
11 Meeting of the executive committee of the Tobacco
12 Institute; and there are handwritten notes, under
13 Braun, it says, purpose of meeting on phone, 9-1,
14 was to see that any AMA and industry stand, quote,
15 did not clash, close quotes, quote, Bert Howard
16 and I have already substantially agreed on what
17 they are going to say, close quotes -- that AMA
18 ~~document~~ of research business, the last part of
19 ~~their~~ research programs.

20 Does that refresh your memory,
21 sir?

22 BY THE WITNESS:

23 A Let me read this.

24 I don't, I don't quite understand

1 what this means, AMA going out of research.

2 I am not clear what that meant.

3 It's possible we were going out of the research
4 project on tobacco and health, for want of funds;
5 but I am not sure what that meant.

6 Q Did the AMA-ERF conduct funded
7 research, subsequent to the termination of the
8 funding provided by the tobacco industry?

9 A I can't answer that because I don't
10 know the exact timing. I know that he had great
11 problems, raising problems for the research of the
12 institute, which was a separate endeavor from this
13 particular committee on tobacco and health
14 research project. We were separate, although they
15 may have been under the AMA-ERF umbrella; but they
16 really were different programs.

17 Q I am going to show you --

18 A If, if the tobacco industry was
19 withdrawing all of its support, financial support,
20 we would have given up the research because we
21 would have had no funds to continue it, as a
22 matter of fact.

23 MR. EDELL: Mark these for
24 identification, please.

(Whereupon said documents were duly marked by the court reporter as requested and made a part of the record hereof.)

BY MR. EDELL:

Q Doctor Howard, I am going to show you a letter, which purports to be a letter from you, to Mr. A. H. Galloway, Chairman of R. J. Reynolds Industries, Inc., of February 8, 1972, which attaches a document entitled AMA-ERF tobacco and health research program; and, then, on page three of that document, it lists options to be considered.

Do you recall proposing that document, and sending it to Mr. Galloway?

BY THE WITNESS:

I don't recall the exact contents; but I feel this is accurate, that this is correct, that I, probably, signed a statement of this kind.

Q I am going to show you a document which we have marked as Howard 9 for identification. The first page is a letter from you, to Mr.

1 Galloway, of July 27, 1972, which letter has
2 attached to it, Mr. Galloway's letter to you, of
3 July 18, 1972.

4 Do you recall sending the July 27,
5 1972 letter to Doctor Galloway; and do you recall
6 seeing Doctor Galloway -- I am sorry, Mr.
7 Galloway's letter of July 18, 1972?

8 A Yes, that's -- I say, I recall that, in
9 general. I think it's accurately --

10 Q Is that your signature on --

11 A Yes, that's my signature.

12 Q -- the document, sir?

13 And when you say the document, you
14 are referring to Howard 9 for identification?

15 A Yes.

16 Q Was -- did you agree that the funding
17 companies, and the AMA would not make any formal
18 statements, regarding the termination of
19 the funding agreement?

20 A If it says that there, I think that's
21 true. I don't recall that; but if that's what the
22 correspondence says, it is true.

23 Q I will direct your attention to the
24 second page, of Mr. Galloway's, Chairman of R. J.

1 Reynolds, letter to you, of July 18, 1972, the
2 first full paragraph.

3 A Uh-huh. I have read it.

4 Do you have a question on that?

5 Q Yes. Do you have any reason to believe
6 that that contingency was not accepted by the
7 American Medical Association?

8 A I think, under these circumstances, I
9 believe it was accepted, that the proposal was
10 considered not, not unfair, considering the
11 financial support that industry had given the
12 entire research efforts; and that under those
13 circumstances, if it wished to withdraw from the
14 efforts in this manner, with this contingency, it
15 was acceptable.

16 Q Do you recall Mr. Campion working with
17 the representative of the tobacco industry, to
18 prepare a statement, in the event that questions
19 were presented to the AMA-ERF?

20 A I would not have been involved in that
21 preparation.

22 Q Do you recall --

23 A I, myself?

24 Q -- appointing Mr. Campion to do this?

1 A Well, I think I said, I did, there.

2 Q Yes, in your letter.

3 A Well, I presume. I don't recall, but I
4 presume I did. I would have been the one to do
5 it.

6 Q That would have been one of his
7 functions?

8 A Yeah, that would have been his function
9 as director of public relations. I think he was,
10 at the time.

11 Q Who, if anyone, was responsible for
12 approving of any statement, agreed upon by Mr.
13 Campion, and a representative of the tobacco
14 industry, regarding the AMA-ERF program, which was
15 funded by the tobacco industry?

16 MR. PARRISH: Object to the form of the
17 question.

18 BY THE WITNESS:

19 A I, probably, would have been; but it
20 depended on the nature of the statement. It might
21 have had to go to the board. I don't recall how
22 that would have been processed.

23 BY MR. EDELL:

24 Q Okay.

1 A It would depend on the nature of the
2 statement.

3 MR. EDELL: Would you mark this,
4 please.

5 (Whereupon said document
6 was duly marked by the
7 court reporter as
8 requested and made a part
9 of the record hereof.)

10 BY MR. EDELL:

11 Q I am going to show you a document we
12 have marked as Howard 10 for identification. The
13 first page of which is a letter from William
14 Kloepfer, Jr., I will represent to you, he was in
15 charge of public relations for the Tobacco
16 Institute, of October 16, 1972, to Frank Campion,
17 American Medical Association; and it attaches a
18 draft of questions and answers; and ask you
19 whether or not it would have been your
20 responsibility, at that time, to have approved the
21 questions and answers dialogued, as set forth in
22 the attachment?

23 BY THE WITNESS:

24 A I don't recall this. I am not reading

1 it in great detail; but I don't recall seeing this
2 question and answer dialogue, here. I am not
3 clear how it was to be used. I don't recall
4 seeing this.

5 I am not saying I didn't see it.
6 I don't recall seeing it.

7 Q Were there any questions posed to the
8 AMA, regarding the termination of the funding by
9 the tobacco companies to the AMA-ERF program?

10 A Would you repeat that question, again,
11 I understood it; but I would like to hear it,
12 again.

13 (Whereupon the last
14 question was read back by
15 the court reporter as
16 requested.)

17 BY THE WITNESS:

18 A I don't, I am sorry, I don't quite
19 understand that question.

20 BY MR. EDELL:

21 Q Did members of the press, or members of
22 the American Medical Association, make any inquiry
23 of you, or any other executive member, as to why
24 the funding was terminated?

1 A Not particularly, that I recall. There
2 was very little discussion about it, at that
3 point. Legally, the program had lost much of its
4 interest as a research program; and the fact that
5 the tobacco company was phasing out its
6 contributions, at that point, there wasn't much,
7 much interest in the research project, per se.

8 Q Did the AMA agree not to characterize
9 or summarize the research of which had been funded
10 by the tobacco companies through the AMA-ERF
11 program; but rather, simply, present the, the
12 reports of the researchers, themselves?

13 A I don't know the answer to that
14 question. When you say the AMA, again, it's
15 always a problem -- did the AMA, who is the AMA in
16 this case?

17 I don't know an answer to that
18 question.

19 MR. EDELL: Would you mark that for
20 identification, please.

21 (Whereupon said document
22 was duly marked by the
23 court reporter as
24 requested and made a part

of the record hereof.)

BY MR. EDELL:

Q I am going to show you a memorandum which is dated December 3, 1976, from William Kloepfer, for a number of individuals, Re: American Medical Association Education and Research Foundation Tobacco and Health Research Project final report.

And I direct your attention to the last paragraph; and see if that refreshes your memory, with regards to the AMA's agreement not to characterize or summarize the overall findings?

BY THE WITNESS:

A Now, this doesn't refresh my memory. I don't recall ever, personally, advising him that we would make no characterization or summary. I don't, I don't recall whether we did or not; but this does not refresh my memory, with respect to that.

MR. EDELL: I am doing to take a short break and go through my notes.

(Whereupon a short recess was had.)

MR. EDELL: Back on the record.

1 BY MR. EDELL:

2 Q I am going to show you --

3 MR. EDELL: Would you mark that,
4 please.

5 (Whereupon said document
6 was duly marked by the
7 court reporter as
8 requested and made a part
9 of the record hereof.)

10 BY MR. EDELL:

11 Q I am going to show you a document we
12 have marked as Howard 12 for identification. It's
13 titled, report of the board of trustees, subject,
14 to tobacco and health, presented by Percy E.
15 Hopkins, M.D.

16 Do you recall seeing that
17 document, sir?

18 BY THE WITNESS:

19 [REDACTED] I recall, generally, seeing this. It's
20 accurate.

21 Q What is it, sir?

22 A It's a special report from the board of
23 trustees, to the House of Delegates; and the
24 subject is tobacco and health.

1 Customarily, the chairman of the
2 board always put his name, and presents it to the
3 house. This is one of those reports, to the House
4 of Delegates, where action by the house --

5 Q Is this the, the proposal that lead to
6 the AMA-ERF committee on research on tobacco and
7 health?

8 A I think so. This is, this is the
9 general outline of the proposal.

10 Q Do you recall a, do you recall a series
11 of your correspondence, regarding research
12 conducted by Doctor Auerbach and Hammond, between
13 Philip Morris and the American Medical
14 Association?

15 A I don't recall, offhand, no. I may
16 have -- may, when you show me the document; but I
17 don't recall Auerbach, was it?

18 Q Auerbach, Oscar Auerbach?

19 A I don't recall that.

20 MR. EDELL: Would you mark this,
21 please.

22 (Whereupon said document
23 was duly marked by the
24 court reporter as

1 requested and made a part
2 of the record hereof.)

3 BY MR. EDELL:

4 Q Doctor Howard, I am going to show you a
5 document we have marked as Howard 13 for
6 identification. It's a letter to Doctor Gerald D.
7 Dorman, President of American Medical Association,
8 dated -- it's dated June 22, 1970, from Joseph F.
9 Cullman, III, Chairman of the Executive Committee
10 Tobacco Institute; and, also, Chairman of the
11 Board of Philip Morris.

12 See if that refreshes your
13 recollection with regards to correspondence from
14 Philip Morris to the AMA, concerning Doctors
15 Auerbach and Hammond study?

16 BY THE WITNESS:

17 A I have no doubt this is an accurate,
18 authentic statement. This letter, I don't recall
19 it.

20 Q You don't recall there being a request
21 for the review of the work by Doctors Auerbach and
22 Hammond by the tobacco companies?

23 A I do not recall. This letter went to
24 Doctor Dorman, as president, in his office, in New

1 York. One would have expected that Doctor Dorman
2 would transmit this letter to the executive office
3 of the AMA, but I don't recall seeing this ever
4 before.

5 Q Are you aware that the paper he
6 referred to by Doctors Auerbach and Hammond, was
7 rejected for publication by the journal of the
8 American Medical Association?

9 A No, I am not aware of that.

10 MR. EDELL: I have no further
11 questions. Thank you.

12 THE WITNESS: Did you say no further
13 questions?

14 MR. SHAPIRO: He is done.

15 THE WITNESS: Okay.

16 MR. PARRISH: Could I see -- what's the
17 last, 13?

18 Could I see 12 and 13, please.

19 THE WITNESS: Am I through, then?

20 MR. PARRISH: No, not quite.

21 MS. ANDERSON: See if they have any
22 questions.

23 THE WITNESS: Oh, okay.

24

C R O S S E X A M I N A T I O N

BY MR. SHAPIRO:

Q Doctor, I introduced myself, briefly, before. My name is Barry Shapiro. The firm with which I am affiliated, represents Lorillard and its affiliation.

Mr. Edell inquired of you, about your, whether you had met with anybody in preparation for your deposition, correct?

BY THE WITNESS:

A Yes.

Q Did you speak to Mr. Edell about this deposition?

A Who?

Q Did he talk to you about this deposition?

A No.

Q Did you have any conversations with him, concerning this?

A I don't recall ever talking to him.

MR. EDELL: I don't think so.

MR. PARRISH: Marc, by my notes, I think the following exhibits are designated as confidential, 1, 4, 5, 6, 8, 9, 10, and

1 13.

2 Believing that to be true, I will
3 request that those exhibits to the
4 deposition, be maintained as confidential;
5 and the portions of the transcript regarding
6 those exhibits, be treated as confidential,
7 under the protective order.

8 MR. EDELL: Are those documents that
9 are referred to, documents that are, really,
10 considered to be confidential?

11 MR. PARRISH: They are designated as
12 confidential, under the protective order that
13 is in effect in the case.

14 MR. EDELL: There was a suggestion, by
15 your office, that some of the documents were
16 marked as confidential, which, truly, were
17 not confidential because of the expedited
18 fashion in which they were produced for me,
19 in this litigation; and I am, simply, want to
20 find out whether or not any of the documents
21 that bear the confidential designation,
22 bear that designation not because the
23 documents are truly confidential; but
24 because, in the desire to provide them

1 expeditiously with the documents I requested,
2 some documents were mismarked?

3 MR. PARRISH: I think you can assume
4 that the documents that I have referred to,
5 just now, are to be treated as confidential.

6 MR. EDELL: Truly confidential?

7 MR. PARRISH: And that's why I said, I
8 don't believe the protective order makes any
9 distinction between confidential, and truly
10 confidential; and I am saying to you, that we
11 request that they be afforded the protection
12 of confidentiality under the protective
13 order; and the portions of the transcript,
14 also, be treated as confidential.

15 MR. EDELL: I understand that all those
16 documents are protected under the protective
17 order.

18 Be they documents stamped
19 confidential or not, my request from you was,
20 to find out whether or not the documents that
21 are stamped confidential, are truly
22 considered to be confidential by Philip
23 Morris.

24 MR. PARRISH: I am considering these

1 documents as confidential.

2 MR. EDELL: Okay. That's all I
3 wanted to know.

4 MR. PARRISH: And I think that's what I
5 said.

6 MR. EDELL: Fine.

7 C R O S S E X A M I N A T I O N

8 BY MR. SHAPIRO:

9 Q Doctor Howard, did the AMA, as an
10 organization, ever take any position, decline to
11 take any position, or modify any position,
12 concerning smoking and health, because of the
13 funding provided by various tobacco companies, for
14 research?

15 BY THE WITNESS:

16 A I believe the answer is, no. I think
17 the research was absolutely uninfluenced by the
18 source of the funding.

19 MR. SHAPIRO: I have nothing further.

20 C R O S S E X A M I N A T I O N

21 BY MR. PARRISH:

22 Q Doctor Howard, did any tobacco company
23 attempt to put pressure on you, or the AMA, with
24 regard to how individual grants would be made?.

1 BY THE WITNESS:

2 A No. The answer is strongly, no. There
3 was no such pressure.

4 Q Any tobacco company attempt to put
5 pressure on you, or the AMA, with regard to how a
6 vote of the House of Delegates would be resolved?

7 A No, there was no such pressure.

8 MR. PARRISH: I have no further
9 questions.

10 MS. ANDERSON: You are through.

11 MR. EDELL: Let me just ask a couple of
12 questions, which are precipitated by my
13 colleagues.

14 R E D I R E C T E X A M I N A T I O N

15 BY MR. EDELL:

16 Q Doctor, you don't know how grants were
17 presented by the committee on research on tobacco
18 and health, do you, sir?

19 BY THE WITNESS:

20 A How they were presented?

21 Q Yes.

22 A Could you explain your question?

23 Q Sure. Do you know how the grants were
24 approved by the committee on research on tobacco

1 and health?

2 A Not really. I didn't participate in
3 that action. The committee received a, a, a
4 request, from some researcher. Publicity had been
5 the AMA journal; but the committee requests were,
6 were accepted by the committee; and how they acted
7 on that, I don't know.

8 Q You weren't present during the
9 decision-making process?

10 A No.

11 Q Where the committee reviewed --

12 A Only the committee acted on that
13 matter.

14 Q Let me finish the question.

15 You weren't present, when the
16 committee met and reviewed the grants and decided
17 which, which proposal for grants, which, which
18 proposal should be afforded grants?

19 A No.

20 Q Is that correct?

21 A I was never present on such a
22 discussion.

23 MR. EDELL: I have no further
24 questions.

1 R E C R O S S E X A M I N A T I O N

2 BY MR. SHAPIRO:

3 Q Am I correct, Doctor Howard, that the
4 committee advertised for grant proposals?

5 BY THE WITNESS:

6 A Yes, it did.

7 Q So, it solicited them from any
8 researchers, who might be interested?

9 A Oh, yes.

10 Q Let me ask you, again, repeat the
11 question I asked you, earlier. You indicated
12 that, to your knowledge, none of the research was
13 influenced by the tobacco companies, which
14 provided funding, correct?15 A To my knowledge, none of it was
16 influenced.17 Q Was any position ever taken by you, in
18 regard to smoking and health, ever influenced by
19 the fact that the tobacco companies were providing
20 research money?

21 A The answer is, no.

22 Q To your knowledge, was any position on
23 smoking and health, taken by the AMA, as a body,
24 ever influenced by the fact that, the tobacco

1 companies were providing money for independent
2 research?

3 A The answer to that question is, no, I
4 don't think that the fact that tobacco money was
5 being used to conduct the research, influenced the
6 votes in the house.

7 Q But you were concerned that people just
8 looking at the fact that the tobacco company was
9 providing money --

10 A I was.

11 Q -- without looking at it in depth,
12 might draw conclusions, that would not, that would
13 be harmful to the AMA?

14 A I was deeply concerned; and I, alone, I
15 think, opposed acceptance of these funds.

16 MR. SHAPIRO: Thank you.

17 BY THE WITNESS:

18 A For that reason.

19 R E D I R E C T E X A M I N A T I O N

20 BY MR. EDELL:

21 Q Doctor, you stated that the funding by
22 the tobacco companies never influenced any action
23 taken by you, or the AMA, is that what you just
24 told Mr. Shapiro?

1 BY THE WITNESS:

2 A His question was somewhat different,
3 the policies annunciated by the House of
4 Delegates. His question, I think, went to the
5 policies adopted by AMA, in this case, the House
6 of Delegates, was the House of Delegates
7 influenced by the fact that money was given for
8 research. I think the answer on that is, no.

9 Q Was any action by the AMA or its
10 members -- strike that.

11 Was any action by the AMA,
12 influenced by the fact that they received funding
13 from the tobacco companies for this research?

14 A I don't think so.

15 Q Did you not tell us, sir, that the
16 decision not to make a public statement concerning
17 the termination of the AMA-ERF program funded by
18 the tobacco companies, was, in part, made because
19 these tobacco companies had provided --

20 A Yes.

21 Q -- so many millions of dollars for
22 research?

23 A But may I explain my answer?

24 Q You, certainly, may.

1 A I don't think -- yes, in conflict with
2 what I said, previously.

3 At that point in history, the
4 industry which had provided so many millions of
5 dollars, had decided to withdraw, for various
6 reasons.

7 We were willing, I was willing,
8 and my superiors were willing, to terminate that
9 relationship, and that research effort, in a
10 manner most conducive to the, to the goodwill of
11 the tobacco industry, if you will; however, our
12 action, and my opinion, did not distort, in any
13 way, the sum total of the information, research,
14 knowledge, provided by that research effort.

15 Q You don't know, sir, whether or not,
16 for instance, Doctor Blasingame's writing that
17 letter to the Federal Trade Commission, was
18 prompted by the funding by the tobacco companies,
19 correct?

20 MR. PARRISH: Asked and answered.

21 BY THE WITNESS:

22 A I don't know.

23 BY MR. EDELL:

24 Q Did you ever make any public-like

1 statements, to the effect, that the work performed
2 by the AMA-ERF program, failed to clear the
3 tobacco companies of the generally accepted
4 proposition that cigarette smoking caused lung
5 cancer?

6 MR. PARRISH: Object to the form of the
7 question.

8 BY THE WITNESS:

9 A I never made, I would not have made
10 such a statement. I don't, I never believed that,
11 one way or the other. I have already told you, at
12 some length, about that word, causation.

13 BY MR. EDELL:

14 Q Did you ever make a statement?

15 A The word, trigger, would be much
16 better.

17 Q Did you ever --

18 A Triggering is another thing.

19 Q Did you ever make a statement that
20 cigarette smoking triggered the development of
21 lung cancer?

22 A I don't recall that I did.

23 Whether the AMA committee ever
24 did, or the house did, I don't know.

1 Q Do you know whether they --

2 A They may have, in the last meeting,
3 they took strong actions, at this last meeting, as
4 you know.

5 Q I noticed that.

6 A Whether they used the word,
7 triggered -- we use the word, trigger, ultraviolet
8 rays trigger skin cancer.

9 Why doesn't it cause it all over
10 my hand, rather than give me two skin cancers?

11 I have trouble with the word,
12 cause. Why don't all cigarette smokers, heavily
13 smoking for 30 years, develop pulmonary cancer?

14 If it causes cancer, why don't
15 they all develop cancer?

16 Why do only a few percent develop
17 cancer?

18 You are getting in a very
19 difficult research area, here, on that word,
20 causation.

21 Q Did you ever make the statement that
22 there was a strong association between cigarette
23 smoking and lung cancer?

24 A Did I ever make the statement?

1 Q Yes.

2 A I don't recall. I could have made it,
3 since I believe that. I have, for many, many
4 years; so, I could have made that statement; but I
5 don't recall whether or not I did, or not in any
6 public way.

7 Q In formulating resolutions which are
8 submitted to the House of Delegates, is any
9 thought given to what impacts those resolutions
10 will have, the adoption of those resolutions will
11 have, on the general public?

12 A Oh, yes, it will.

13 Q Why is that, sir?

14 A Well, the AMA is a public organization,
15 responsive very much to public attitude. Any
16 resolution within, which that House of Delegates
17 develops, is considered very carefully, in light
18 of the impact on public opinion.

19 Q Well, is, do you know whether or not
20 the American Medical Association is considered by
21 the general public to be authoratative on issues
22 of health?

23 A We have taken many poles. I don't know
24 what they show in the last ten years; but,

1 generally, every pole has shown that the public
2 has great faith in the opinion of the American
3 Medical Association on questions of health.

4 Q And by telling the public, that it has
5 not been proven, that cigarette smoking causes
6 lung cancer, do you think that the general public
7 would accept that proposition, if the AMA put that
8 proposition to the public, as it's, as it's
9 official position?

10 A I don't know what the acceptance would
11 be.

12 MR. PARRISH: I object to the form.

13 BY THE WITNESS:

14 A I would say, the public would be
15 influenced by statements like that, from the AMA;
16 but it is stipulated that the public reaction
17 would be in terms of action.

18 MR. PARRISH: Object to the form, it
19 calls for speculation.

20 BY THE WITNESS:

21 A That they be impressioned by that
22 statement.

23 BY MR. EDELL:

24 Q Is it an accurate statement, sir --

1 strike that.

2 Is it a complete statement to
3 inform the public, that it hasn't been proven,
4 that cigarette smoking causes cancer in human
5 beings?

6 MR. PARRISH: Object to the form of the
7 question.

8 BY THE WITNESS:

9 A The form of the question is, is
10 elusive, shall we say. You are right, it is not a
11 complete statement. It is not the truth, the
12 whole truth, and nothing but the truth.

13 BY MR. EDELL:

14 Q Why is that, sir?

15 A Because there are other facts, that
16 are, clearly, apparent; and that is the
17 relationship, the association.

18 The fact that pulmonary cancer
19 occurs, primarily, in heavy smokers, to say that
20 it doesn't cause pulmonary cancer, is not to tell
21 the whole truth.

22 Q Well, the general public -- do you, do
23 you have an opinion, as to whether or not the
24 general public understands that all of these

1 are -- bits of information are missing, when they
2 receive information that hasn't been proven, that
3 cigarette smoking causes lung cancer?

4 MR. PARRISH: I object to that question
5 on the grounds that the Doctor is not
6 qualified as an expert witness.

7 THE WITNESS: I would say you are
8 beyond me. I don't know the answer to that.

9 MR. EDELL: Okay.

10 THE WITNESS: I, simply, would
11 speculate.

12 MR. EDELL: We don't want you to
13 speculate.

14 THE WITNESS: Okay.

15 MR. EDELL: Thank you.

16 MR. SHAPIRO: Okay.

17 MR. EDELL: Is the witness going to
18 sign it?

19 MS. ANDERSON: We are going to see the
20 deposition.

21 (FURTHER DEPONENT SAITH NOT.)

22 - - - * * * - - -

23

24

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)

3
4
5
6 I, ERNEST B. HOWARD, M.D., having
7 been previously duly sworn, depose, and saith
8 that I have read the foregoing transcript of
9 proceedings taken at my deposition at the time and
10 date aforesaid; and the foregoing is a true and
11 correct copy of the testimony so given by me at
12 said deposition, except as I have so indicated on
13 the attached correction sheets.

14
15
16
17 _____
 Ernest B. Howard

18
19
20 SUBSCRIBED AND SWORN TO
21 before me this 27th day of
22 February, A. D., 1986.
23 _____
 Kathleen M. Madonia
24 Notary Public

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF DU PAGE)

3
4 I, GLORIA M. SCHUELKE, C.S.R.,
5 R.P.R., a Notary Public within and for the County
6 of Du Page, State of Illinois, and a Certified
7 Shorthand Reporter of said State, do hereby
8 certify:

9 That previous to the commencement
10 of the examination of ERNEST B. HOWARD, M.D., he
11 was duly sworn to testify the whole truth
12 concerning the matters herein;

13 That the foregoing deposition
14 transcript was reported stenographically by me,
15 was thereafter reduced to typewriting under my
16 personal direction, and constitutes a true record
17 of the testimony given and the proceedings had;

18 That the reading and signing by
19 the witness of the deposition transcript was
20 reserved;

21 That I am not a relative or
22 employee or attorney or counsel, nor a relative or
23 employee of such attorney or counsel for any of
24 the parties hereto, nor interested directly or

1 indirectly in the outcome of this action.

2 IN WITNESS WHEREOF, I do hereby
3 set my hand and affix my seal of office at
4 Chicago, Illinois, on this 4th day of February,
5 A. D., 1986.

6
7
8
9 
10 Notary Public, Du Page County, Illinois.

1 STATE OF ILLINOIS)
2) SS:
COUNTY OF C O O K)

3 I wish to make the following changes, for
4 the following reasons:

5 PAGE LINE

6 13 15 **CHANGE:** delete one "the"

7 **REASON:** typo

8 34 15 **CHANGE:** "sontimes" should be "sometimes"

9 **REASON:** typo

10 20 **CHANGE:** "if" should be deleted before "the" at the end
of the line

11 **REASON:** transcription error

12 42 13 **CHANGE:** "making" should be "make"

13 **REASON:** transcription error

14 49 12 **CHANGE:** "not" should be deleted

15 **REASON:** transcription error

16 20 **CHANGE:** "has" should be "had"

17 **REASON:** typo

18 55 5 **CHANGE:** "Ellen" should be "Eleanor"

19 **REASON:** transcription error

20 65 2 **CHANGE:** "I" should precede "did"

21 **REASON:** transcription error

22 (Signed)

23 
24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4 I wish to make the following changes, for
5 the following reasons:

PAGE	LINE	CHANGE:	REASON:
66	4	"was" should be "were"	typo
67	2	"Mr. Schuman's" should be "Truman's"	transcription error
	9	"Witzer" should be "Whitaker"	transcription error
	22	"19" should be "69"	transcription error
77	10	"he" should be "we"	transcription error
	11	"fund" should be inserted between "problems," and "from"	transcription error
98	3	"annunciated" should be "enunciated"	typo
102	23	"poles" should be "polls"	typo

(Signed)

Sam. H. Howard

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4 I wish to make the following changes, for
5 the following reasons:

6 PAGE LINE

7 103 1 CHANGE: "pole" should be "poll"

8 REASON: typo

9 CHANGE:

10 REASON:

11 CHANGE:

12 REASON:

13 CHANGE:

14 REASON:

15 CHANGE:

16 REASON:

17 CHANGE:

18 REASON:

19 CHANGE:

20 REASON:

21 CHANGE:

22 REASON:

23 (Signed)

24 Sam Howard

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)

3 I wish to make the following changes, for
4 the following reasons:

5 PAGE LINE

6 13 22 CHANGE: "27" to "20"

7 REASON: typo

8 19 8-9 CHANGE: "between" to "beseach"

9 REASON: typo

10 39 4 CHANGE: add "in" before "which"

11 REASON: transcription error

12 49 10 CHANGE: "is" to "was"

13 REASON: typo

14 66 2-4 CHANGE: delete "He _____, smoke"

15 REASON: transcription error

16 66 4-5 CHANGE: to "He felt there might be up to 500 different
different entities in smoke"

17 REASON: transcription error

18 CHANGE: _____

19 REASON: _____

20 CHANGE: _____

21 REASON: _____

22 (Signed)
23 _____
24